

REMARKS/ARGUMENTS

The above amendments are made to resolve §112 issues pointed out by the Examiner. As such, no substantive information, and hence no new matter, is added. Further, as these amendments remove issues, placing the claims in better condition for appeal, their entry after Final Rejection appears proper.

The Examiner first objected to claim 8 as failing to further limit the subject matter of the previous claim. Applicant's respectfully contest this assertion. Claim 8 depends from claim 1 and so contains all of Claim 1's limitations. As Claim 1 provides an upper limit of 90 percent LLDPE, Claim 8 also contains this limitation. It is not necessary that a dependent claim repeats recitations that it does not further modify.

Claims 2-6, 8, 9, 11-18 and 20-23 were rejected under 35 USC § 112 as being indefinite for failing to particularly point out and claim the subject matter which applicant regards as the invention. Applicants thank the Examiner for pointing out these deficiencies, but believe they have been fully addressed by the present amendments.

Next, the Examiner has rejected Claims 1-6, 8, 9, 11-14, 17, 18 and 20-22 under 35 USC § 102(b) as being anticipated by Kelch (US 5,000,992) as evidenced by Chen et al (US 5,286,525) and Esneault et al. (WO 96/16122). The claims were previously amended to recite a film consisting essentially of one or more foamed polyolefin sheets in an attempt to distinguish the references cited by the examiner which required foamed as well as non-foamed sheets. The Examiner responded to this saying, "absent a clear indication of what the basic and novel characteristics are, 'consisting essentially of' is construed as equivalent to 'comprising'", and with that understanding, found that the claims were still not novel over the art which required the non-foamed layers.

The Applicants respectfully submit that the claims themselves provide a clear indication of what the basic and novel characteristics of the present invention are. The present claims recite a foamed polyolefin made from a combination of a specific LLDPE resin and a specific LDPE resin. As discussed in the previous response, the Applicants have discovered that such films surprisingly have sufficient strength that

they do not need the support provided by the non-foamed layers used in the prior art references. In this context, it is clear that “consisting essentially of” is meant to exclude non-foamed layers, and thus should be given the ordinary meaning that the term has been given in the field of patent law. It is well established that elimination of an element (i.e. the non-foamed layer) without the corresponding loss of function (i.e. sufficient strength to function in various applications mentioned in the present application) may result in patentable subject matter. Thus, it is respectfully submitted that the present claims describe patentable subject matter over the art cited by the Examiner.

Respectfully submitted,

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